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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,327	08/01/2003	Andrew Kilkenny	340.180	5230

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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,327	KILKENNY ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9-11, 13-23, 27-29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11, 13-23, 27-29 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on March 27, 2006.
2. Claims 1-6, 9-11, 13-23, 27-29 and 31 are pending. Claims 7, 8, 12, 24-26 and 30 have been cancelled.
3. The rejection of claims 13, 18, 21 and 24 under 35 U.S.C. 102(b) as being anticipated by Magyar (US Patent No. 4,613,446) is withdrawn in view of Applicants' amendment.
4. The rejection of claims 1, 3, 5, 7, 9-13, 16-18, 21, 24, 27-31 under 35 U.S.C. 102(b) as being anticipated by Piltingsrud (US Patent No. 6,402,851) is withdrawn in view of Applicants' amendment.
5. The rejection of claims 14, 15, 19, 20, 22, 23, 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over Magyar as applied to the above claims, and further in view of Barger et al. (US Patent No. 6,562,142) is withdrawn in view of Applicants' amendment.
6. The declaration under 37 CFR 1.132 filed March 27, 2006 is insufficient to overcome the rejections based upon Barnabas or Sherry as set forth in the last Office action because: it is not commensurate in scope with the claims. Table I shows comparison between Inventive Composition A and a Comparative Example having the same ingredients and proportions with the exception of the pH. It is not indicated in the Table if, in fact, the pH of the composition of the invention is due to the addition of sodium hydroxide and the Table does not show what

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amount of sodium hydroxide is used. It is not seen whether the amount of sodium hydroxide (or potassium hydroxide) is within the range disclosed in the present claims, and whether the range is within or outside the range recited in the prior art to Barnabas or Sherry. Even assuming the pH of 12.45 is due to sodium hydroxide, the showing is only limited to the ingredients shown which are isopropanol, propylene glycol n-butyl ether, octyldiphenyloxide disulfonate and their respective proportions, and not to the generic solvents recited in the present claims.

7. Claims 1-6, 9-11, 13-14, 16-19, 21-22, 27-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnabas et al. (Pub. No. US 2003/0119705), hereinafter "Barnabas".

Barnabas teaches a pre-moistened wipe for treating a surface, the moistened wipe comprising a substrate and an aqueous composition (see abstract). In one embodiment, especially wherein the pre-moistened wipes are to be applied on hard surfaces soiled with very tough greasy or grease-containing soil as often can be found on kitchen surfaces, the pH range of the aqueous solution composition, squeezed out from the pre-moistened wipe, is from about 6 to about 13 (see page 5, section [0060]) and wherein the composition comprises base buffers to adjust pH, for example, inorganic bases such as sodium hydroxide or potassium hydroxide which are used at a level from about 0.01% to about 0.5% (see page 5, sections [0061-0062]). A low residue surfactant such as an alkyl polyglycoside (also a GRAS ingredient) is an essential ingredient of the composition applied to the pre-moistened wipes (see page 5, sections 0064-0068]). Solvents like aliphatic alcohols and glycols are optional ingredients and, when present, are effective at levels from about 0.5% to about 25% (see pages 11-12, sections [0131-0142]). , more preferably about 1.0% to about 20% and most preferably, about 2% to about 15% (see page

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12, section [0142]). Suitable aliphatic alcohols are methanol, ethanol, propanol, isopropanol or mixtures thereof, ethanol and isopropanol being most preferred (see page 11, section [0134]). In addition to filming, streaking and cleaning benefits, the compositions of the present invention provide antimicrobial benefits (see page 19, section [0224]). Barnabas also teaches a process of cleaning a surface, preferably a hard surface, comprising the step of contacting, preferably wiping, said surface with the pre-moistened wipe (see section [0166] on page 14). The liquid composition may comprise a variety of other optional ingredients depending on the technical benefit aimed for and the surface treated, for example, polymers (see page 13, section [0155]). Barnabas, however, fails to specifically disclose a wipe wherein the liquid composition comprises less than 4% by weight total organic solvent having a pH greater than 10 or about 10 and/or sodium hydroxide in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the organic solvent, sodium hydroxide and pH of the composition because optimization for the best results is within the level of ordinary skill in the art. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges overlap or lie inside ranges disclosed by the prior

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art, see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

8. Claims 15, 20 and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Barnabas as applied to the above claims, and further in view of Barger et al. (US Patent No. 6,562,142), hereinafter “Barger”.

Barnabas teaches the features as described above. Barnabas, however, fails to disclose a hydrophilic nanoparticle into the wipe.

Barger teaches a hard surface treating composition comprising nanoparticles with particle sizes ranging from about 2 nm to about 400 nm, for example, LAPONITE™ such that when applied to a hard surface, the hard surface is hydrophilically modified and exhibits surprising and significantly improved wetting and sheeting, quick drying, uniform drying, cleaner appearance and improved transparency properties (see col. 10, lines 18-64; col. 12, lines 33-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the nanoparticles of Barger into the liquid composition in the wipe of Barnabas because this will provide the composition with surprising and significantly improved wetting and sheeting, quick drying, uniform drying, cleaner appearance and improved transparency properties as taught by Barger.

9. Claims 1-6, 9-11, 13-14, 16-19, 21-22, 27-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherry et al. (US Patent No. 6,716,805), hereinafter “Sherry”.

Sherry teaches cleaning liquid composition on a substrate for cleaning hard surfaces (see abstract). A suitable preferred cleaning solution for use in the context of floors, counters, walls, either as a stand-alone or in conjunction with conventional sponges or with disposable pre-moistened wipes or pads comprises from about 0.001% to about 0.25% of hydrophilic polymer, from about 0.001% to about 0.5% of detergent surfactant, preferably comprising alkylpolyglucoside (which is also a Generally Recognized as Safe ingredient); optionally from about 0.001% to about 0.5% volatile buffer material, e.g. ammonia, 1-dimethylamino-2-methyl-1-propanol; optionally from about 0.001% to about 0.05% non-volatile buffer material, e.g. potassium hydroxide; optionally, from about 0.001% to about 0.5% other optional adjuvants such as dyes and/or perfumes (see col. 61, line 62 to col. 62, line 29). One embodiment relates to the use of a composition with hydrophilic polymer and a cleaning pad comprising a superabsorbent material to effect cleaning of soiled surfaces, i.e., the process of cleaning a surface comprising applying an effective amount of a detergent composition, typically containing no more than about 1% detergent surfactant; a level of hydrophobic materials, including solvent, that is less than about 5%; and having a pH of more than about 9 and absorbing the composition in an absorbent structure comprising superabsorbent material (see col. 62, lines 33-49). The residual disinfectancy can also be achieved or enhanced using pH and compositions at a pH 10.5 or greater are found to deliver the desired residual efficacy and preferred actives that are effective as a result of pH include sodium hydroxide and potassium hydroxide (see col. 38, lines 29-43). The above teachings do not include quaternary ammonium compounds. Sherry also teaches compositions which are aqueous, and the compositions which are aqueous comprise at least about 80% aqueous solvent by weight of the composition, and can also comprise in addition

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to water, low molecular weight, highly water soluble solvents, e.g., ethanol, isopropanol, etc. and these solvents can be used to provide disinfectancy properties to compositions that are otherwise low in active, and these high volatile solvents are present from about 0.25% to about 5%, more preferably from about 0.5% to about 3%, most preferably from about 0.5 to about 2%, by weight of the composition (see col. 17, lines 11-35). Sherry, however, fails to specifically disclose a wipe comprising less than 4% by weight total organic solvent, greater than 0.05% by weight potassium hydroxide and a composition having a pH greater than 10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the organic solvent, potassium hydroxide and pH of the composition because optimization for the best results is within the level of ordinary skill in the art. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges overlap or lie inside ranges disclosed by the prior art, see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

10. Claims 15, 20 and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherry as applied to the above claims, and further in view of Barger.

Sherry teaches the features as described above. Sherry, however, fails to disclose a hydrophilic nanoparticle into the wipe.

Barger teaches a hard surface treating composition comprising nanoparticles with particle sizes ranging from about 2 nm to about 400 nm, for example, LAPONITE™ such that when applied to a hard surface, the hard surface is hydrophilically modified and exhibits surprising and significantly improved wetting and sheeting, quick drying, uniform drying, cleaner appearance and improved transparency properties (see col. 10, lines 18-64; col. 12, lines 33-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the nanoparticles of Barger into the liquid composition in the wipe of Sherry because this will provide the composition with surprising and significantly improved wetting and sheeting, quick drying, uniform drying, cleaner appearance and improved transparency properties as taught by Barger.

Response to Arguments

11. Applicants' arguments filed March 27, 2006 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Barnabas, Applicants argue that there are no examples and no suggestion or expectation of success in Barnabas about the criticality of high pH levels for compositions of low levels of solvent to provide disinfectancy or sanitization. Barnabas teaches only three compositions that have antimicrobial effectiveness and these compositions are acidic with high solvent levels.

The Examiner respectfully disagrees with the above arguments because a reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982). Barnabas, as cited above, teaches alkaline-premoistened wipes having a pH range from about 6 to about 13, preferably from pH about 7 to about 12.5 (see section [0060] on page 5) and that the amount of solvents overlap those recited, in particular in the range of 1-4% (see section 0142 on page 12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the alkaline-premoistened wipes of Barnabas to provide disinfectancy or sanitization because similar ingredients have been utilized.

With respect to the obviousness rejection of claims 15, 20, 23 and 26 based upon Barnabas in view of Barger, Applicants argue that Barnabas provides no suggestion or expectation of success for the limitations of amended claim 13, upon which claims 15, 20 and 23 depend (claim 26 has been canceled).

The response above with respect to Barnabas applies here as well. Hence, the combination of Barnabas with Barger is proper and is maintained.

With respect to the obviousness rejection based upon Sherry, Applicants argue that there are no examples and no suggestion or expectation of success in Sherry about the criticality of a pH of 10 or greater and low levels of solvent to provide disinfectancy or sanitation.

The Examiner respectfully disagrees with the above arguments because a reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982). As stated above, Sherry teaches in col. 17, lines 11-35 that, in compositions which are aqueous, there can be added, in addition to water, low molecular weight, highly water soluble solvents like ethanol or isopropanol in amounts from about 0.25% to about 5%, more preferably from about 0.5% to

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about 3%, most preferably from about 0.5 to about 2%, by weight of the composition and these solvents can be used to provide disinfectancy properties to compositions that are otherwise low in active. Sherry also teaches in col. 38, lines 29-43 that the residual disinfectancy can also be achieved or enhanced using pH, and compositions at a pH 10.5 or greater are found to deliver the desired residual efficacy and preferred actives that are effective as a result of pH include sodium hydroxide and potassium hydroxide.

With respect to the rejection of claims 15, 20, 23 and 26 based upon Sherry in view of Barger, Applicants argue that Sherry provides no suggestion or expectation of success for the limitations of amended claim 13, upon which claims 15, 20 and 23 depend (claim 26 has been canceled).

The response above with respect to Sherry applies here as well. Hence, the combination of Sherry with Barger is proper and is maintained.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

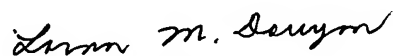
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lorna M. Douyon
Primary Examiner
Art Unit 1751